

2010 APR 19 PM 3:13

BEFORE THE
FEDERAL ELECTION COMMISSION
OF THE
UNITED STATES OF AMERICA

In the Matter of:

Eric Massa

Massa for Congress

MUR

6275

OFFICE OF GENERAL
COUNSEL

2010 APR 19 PM 3:16

RECEIVED
FEDERAL ELECTION
COMMISSION

Complaint

NATIONAL LEGAL AND POLICY CENTER, a corporation organized and existing under the District of Columbia Nonprofit Corporation Act and having its offices and principal place of business at 107 Park Washington Court, Falls Church, VA 22046, files this complaint with the Federal Election Commission pursuant to 2 USC § 437g.

The primary purpose of the National Legal and Policy Center, a charitable and educational organization described in section 501(c)(3) of the Internal Revenue Code, is to foster and promote ethics in government and public life.

The Respondents are a former Member of Congress and his campaign committee who have apparently knowingly and willfully violated federal law, specifically the Federal Election Campaign Act of 1971, as amended, ("the Act" and "FECA").

Respondents

ERIC MASSA, former Member of Congress,
N.Y. 14830

Corning,

MASSA FOR CONGRESS (C00411306), 60 East Market, Suite 244, Corning,
NY 14830

Facts

Virtually all material facts relied upon for this complaint list citations as to their source with many of those sources appended as exhibits for ready reference. For the most part, these sources include documents filed with the Federal Election Commission and news articles.

On April 16, 2010, reporter Jake Sherman of *Politico* posted a story headlined "Massa campaign dropped \$31K on car."¹

The article reported that Representative Eric Massa (D-29th-NY) through his campaign made a payment of \$31,896.42 to GMAC to cover leasing of a campaign car. The payment was made on March 3, 2010.

Just two days after this large car payment by the Massa campaign fund, March 5, 2010, Rep. Massa announced he would be resigning from Congress effective March 8, 2010.²

The *Politico* article reported:

The five previous payments to GMAC were on or around the 25th of each month for a far lower sum - \$605.68. It's not clear why Massa made the lump-sum payment for the car or whether the car would be used in any official capacity.³

The day after the *Politico* story about the Massa campaign's \$31,896.42 car payment broke. Carol D. Leonnig of the *Washington Post* broke a story reporting that the Massa campaign made a \$40,000 payment to Rep. Massa's congressional office chief of staff, Joe Racalto. The expenditure was listed as a "Campaign management fee."⁴

The *Washington Post* article reported:

Racalto said through his attorney Friday that the lump-sum payment was for work on Massa's reelection campaign for 2010. Racalto agreed to defer being paid for 15 months – until he learned that Massa was not going to stay in office, the attorney said.

Under federal law, a congressional staff member's payment for work on a campaign must come from campaign funds, not from the salary received for congressional work.

The payment to congressional staffer Racalto raised additional questions since it was learned that Racalto had just filed sexual harassment charges against his former employer, Eric Massa:

¹ See: Exhibit A: Jake Sherman, "Massa Campaign dropped \$31K on car," *Politico*, April 16, 2010; <http://www.politico.com/news/stories/0410/35930.html>.

² Stephanie Condon, "Rep. Eric Massa Resigns, Takes Responsibility for Harassment Charges," CBS News Political Hotseat, March 5, 2010; http://www.cbsnews.com/301-503544_162-6270838-503544.html

³ *op cit*

⁴ See: Exhibit B: Carol D. Leonnig, "Massa gave \$40,000 to aide before resigning as congressman," *Washington Post*, April 17, 2010, page A04.

Later on Friday, Racalto's lawyer, Camilla McKinley, confirmed that her client filed a complaint on March 23 alleging that Massa had sexually harassed them when they worked together. She declined to provide details or say where the complaint was filed. Such claims are generally made to the House Office of Compliance, which does not make them public in their early stages.³

The *Washington Post* article stated that the lawyer for former Rep. Massa was declining to answer questions "about the payment or Racalto's work."

The article by Carol D. Leonnig went on to report a series of facts that appear to raise serious questions as to the \$40,000 payment to the staffer made just one day prior to Rep. Massa's resignation announcement:

McKinley said Friday that the \$40,000 amount was determined under a contract, which established quarterly amounts that Racalto would be paid. She said she would not provide the date the contract was signed, and could not provide a copy of the agreement.

McKinley said Racalto's work on Massa's re-election campaign for 2010 began in mid-December 2008, a few weeks after he won election to Congress.

Four current and former campaign staffers told the *Washington Post* that they were surprised by the payment and that they were unaware Racalto was doing any substantial campaign work during that time.

They requested anonymity because of the House ethics investigation of Massa and because they did not want to hurt their job prospects on Capitol Hill.

All other staffers working on Massa's campaigns – for 2006, 2008, and 2010 – were paid in more regular installments, often monthly and sometimes quarterly. Campaign reports also show that they were reimbursed for travel, mileage and other campaign-related expenses.

The reports show that Racalto received no payments before March 4 and was not reimbursed for any campaign-related expenses. Stanley Brand, a white-collar defense lawyer and former House general counsel, said that members of Congress have some discretion in how much they pay campaign workers but that Federal Election Commission rules

³ *Op cit.*

mandate that the time congressional staff members spend on campaign work be documented.⁶

The day after the *Washington Post* story cited above, reporter Carol D. Leonnig filed a story stating that Rep. Eric Massa denied authorizing the \$40,000 payment from his campaign to his chief of staff, Joe Racalto.⁷ The article quoted Rep. Massa as saying that someone had forged his signature on paperwork to increase the congressional salary of Chief of Staff Racalto from \$120,000 to \$160,000. Racalto was quoted as responding to this by calling the allegations ridiculous and false and stating that he was entitled to the increase in his staff salary.

The article went on to state that former Rep. Massa accused his former aide of tricking the campaign staff to get the \$40,000 payment from Massa for Congress.

The April 18, 2010 *Washington Post* article quoted the former congressman's lawyer, Milo Silberstein, to further dispute Racalto's account of the campaign payment:

"There is not and never has been any contract between Mr. Racalto and the campaign," Silberstein said. "The amount of \$40,000 was determined solely by Mr. Racalto."

He said Racalto falsely told Massa's campaign attorney and comptroller that the congressman had approved the "fee when he had not."

Silberstein said that, under congressional rules, the payment to Racalto appears to violate the \$25,000 annual limit on the amount of outside income senior congressional staff members can earn for political work.

Racalto responded in a statement released by his attorney late Saturday. He said Massa had approved the campaign payment and the salary increase, which came when other staffers also got raises.

"The timing of the allegations by Massa is highly questionable and suspicious in light of Racalto's announcement of his sexual harassment complaint," said the attorney, Camilla McKinney. "The former congressman is trying to discredit someone who is making a sexual harassment complaint against him."⁸

⁶ *op cit*

⁷ See: Exhibit C: Carol D. Leonnig, "Massa alleges fraud by ex-aide; Ex-congressman says \$40,000 payment and raise were unauthorized," *Washington Post*, April 18, 2010.

⁸ *Op cit*.

Apparent Violations

1. The March 3, 2010 payment by Massa for Congress of \$31,896.42 to GMAC for "Campaign car lease" appears to be a violation of the Federal Election Campaign Act and Federal Election Commission regulations.

The payment was disclosed on the Massa for Congress April 15, 2010 Quarterly Report.⁹

The Federal Election Campaign Act has a broad prohibition against funds contributed to a federal candidate being converted to personal use.¹⁰

Since the payment in question to GMAC was made just two days prior to Rep. Massa's announcement of his retirement plans, it is apparent that the Massa for Congress Campaign committee was not going to be using the \$31,896.42 car lease for the re-election of Rep. Massa.

The Campaign Guide for Congressional Candidates and Committees provides a clear explanation of the proper treatment of vehicle expenses by a campaign:

Vehicle Expenses

Campaign funds may be used to pay for a vehicle that is used for campaign-related purposes, assuming that the costs related to the personal use of the vehicle are *de minimis*. AO 2001-3. Campaign funds cannot be used to pay for expenses related to the personal use of a campaign vehicle unless those expenses are *de minimis*, that is, unless they are insignificant in relation to the overall use. \ 113.1(g)(1)(ii)(D).¹¹

It scarcely needs arguing, but a campaign committee for a person who has resigned from Congress in the midst of a scandal and for whom there are no discernable prospects as a future candidate does not appear to have much in the way of allowable uses for a \$31,896.42 car lease.

2. The payment of a lump sum \$40,000 "campaign management fee" to a Congressional chief of staff who appears to have done no work for the campaign appears to violate the Federal Election Campaign Act and Federal Election Commission regulations.

⁹ Massa for Congress, April 15, 2010 Quarterly Report, FEC Form 3, Schedule B, Itemized Disbursements, page 70.

¹⁰ 2 U.S.C. §439a(b)(1); 113.2(e)

¹¹ Campaign Guide for Congressional Candidates and Committees, April 2008, page 56.

The payment was disclosed on the Massa for Congress April 15, 2010 Quarterly Report.¹²

While there has been a heated dispute between the former Congressman and his former aide as to whether the \$40,000 payment was authorized by Massa or the result of trickery by Rcalto, one thing seems very clear: the payment appears to be improper in many ways:

- Rcalto has failed to disclose a copy of the contract upon which he claims the payment was made, and even failed to disclose the date the purported contract was signed.
- "Four former and current staffers have said they were unaware of any contract Rcalto had for political campaign services with Massa, and they questioned how he could have done \$40,000 worth of work they did not see."¹³
- Unlike other campaign staffers for Massa for Congress, there is no indication of Rcalto receiving reimbursement for travel or other campaign-related expenditures like most campaign staffers would generally receive.
- Rcalto claims the \$40,000 payment he received was to cover 15 months of work for the campaign, yet a review of Massa for Congress reports submitted to the FEC show no entry under Schedule D, Debts and Obligations for money owed to Rcalto for past work.
- House Rules cap the amount of outside employment income which can be earned by senior staff so a question exists as to whether Rcalto's claimed employment violated House Rules.
- The House of Representatives Financial Disclosure Statement submitted by Joseph Rcalto covering the period January 1, 2009 to December 31, 2009 shows Rcalto denying he had "any reportable agreement or arrangement with an outside entity." An employment contract with Massa for Congress would be such a reportable agreement or arrangement.¹⁴

¹² Massa for Congress, April 15, 2010 Quarterly Report, FEC Form 3, Schedule B, Itemized Disbursements, page 82.

¹³ See: Exhibit C: Carol D. Leonnig, "Massa alleges fraud by ex-aide; Ex-congressman says \$40,000 payment and raise were unauthorized," *Washington Post*, April 18, 2010.

¹⁴ http://www.legistorm.com/legal/87239/2009/new_hire/report.html

Conclusion

The gravamen of this complaint is quite simple: shortly before Congressman Massa announced his resignation for Congress, Massa for Congress made two large and very questionable expenditures. Both appear to violate federal election law and FEC regulations.


A \$31,896.42 payment to GMAC for a leased vehicle hardly seems to be for the purpose of re-electing the resigning Congressman – or any other allowable purpose. And it strains credulity if the argument is this that constitutes a *de minimis* personal use of a vehicle as has been allowed by the Federal Election Commission.

The \$40,000 lump sum payment to Joseph Racalto appears to be a highly questionable payment by Massa for Congress regardless of whether it was approved by Rep. Massa or whether it was obtained through deceit. Either way, the weight of facts is compelling that Racalto was not a contract employee with the campaign over a 15-month period.

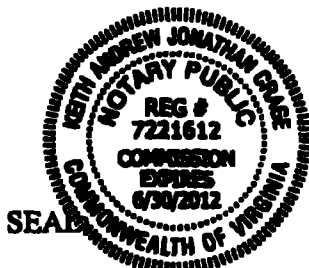
I urge the Federal Election Commission to conduct a full and prompt investigation into the facts of this case. Anything less would undermine the confidence of the public in the integrity of the campaign finance system.

Complainant, upon information and belief and relying upon the public documents referenced herein, swears under penalty of perjury that the statements and facts in this complaint are true and correct to the best of his knowledge and belief.

NATIONAL LEGAL AND POLICY CENTER


Kenneth F. Boehm

Subscribed and sworn before me this 19th day of April 2010.




Notary Public

My commission expires 06/30/2012

POLITICO

Massa campaign dropped \$31K on car

By: Jake Sherman
April 18, 2010 04:45 PM EDT

Former Rep. Eric Massa spent nearly \$32,000 of campaign money on an automobile, just two days before he announced he would resign his New York congressional seat amid sexual harassment allegations.

Massa, a New York Democrat, made a payment of \$31,896.42 to GMAC for a "campaign car lease" on March 3, according to Federal Election Commission filings released this week. Two days later, Massa announced he would resign effective March 8.

The five previous payments to GMAC were on or around the 25th of each month for a far lower sum — \$805.68. It's not clear why Massa made the lump-sum payment for the car or whether the car would be used in any official capacity.

A phone number associated with Massa's address in New York was disconnected Friday, and the lawmaker has largely been out of the limelight since he left Congress.

Ken Gross, a former top Federal Election Commission attorney who is now a campaign lawyer with the firm Skadden Arps, said it would be "problematic" if Massa bought the car with campaign funds for personal use.

"He didn't have a campaign, he wasn't running for anything, so I don't know how he could use the car for campaign purposes," Gross said. "If it was for personal use, it could be in violation of personal use restrictions."

Even in normal circumstances, purchasing a car with campaign funds is "vexing and nettlesome," Gross said. Accounting procedures are cumbersome, because the lawmaker might use the car for several purposes, including for campaign travel, government travel and personal use.

The FEC in 2001 ruled that Rep. Gregory Meeks (D-N.Y.) could purchase an automobile with campaign funds, as long as he kept a mileage log parsing out personal use and campaign use. He said the personal use would be less than 5 percent of his total driving — the FEC ruled that would constitute an acceptable use of the automobile.

Attempts to reach Massa were unsuccessful; his phone appears to have been disconnected.

The Washington Post

Massa gave \$40,000 to aide before resigning as congressman

By Carol D. Leonnig
Saturday, April 17, 2010; A04

The day after Rep. Eric Massa (D-N.Y.) announced he was resigning amid a sexual harassment scandal, the congressman wrote a \$40,000 check from a campaign account to his chief of staff, federal campaign records show.

In the records, Massa described the March 4 payment to Joe Racalto as a "campaign management fee."

Racalto said through his attorney Friday that the lump-sum payment was for work on Massa's reelection campaign for 2010. Racalto agreed to defer being paid for 15 months -- until he learned Massa was not going to stay in office, the attorney said.

Under federal law, a congressional staff member's payment for work on a campaign must come from campaign funds, not from the salary received for congressional work.

The payment to Racalto came at a time of great turmoil in Massa's office. Because of his resignation, Massa's reelection campaign was, for all practical purposes, abruptly ending.

At the same time, the House ethics committee and numerous reporters were contacting Racalto, seeking to interview him about allegations that his boss had sexually harassed and groped his young male staff members. Racalto, as The Post reported last week, knew a great deal about several male staffers' repeated complaints concerning Massa's lewd talk and sexual touching.

Later on Friday, Racalto's lawyer, Camilla McKinney, confirmed that her client filed a complaint on March 23 alleging that Massa sexually harassed him while they worked together. She declined to provide details or to say where the complaint was filed. Such claims are generally made to the House Office of Compliance, which does not make them public in their early stages.

Massa's attorney, Milo Silberstein, said the former congressman was declining to answer questions about the payment or Racalto's work.

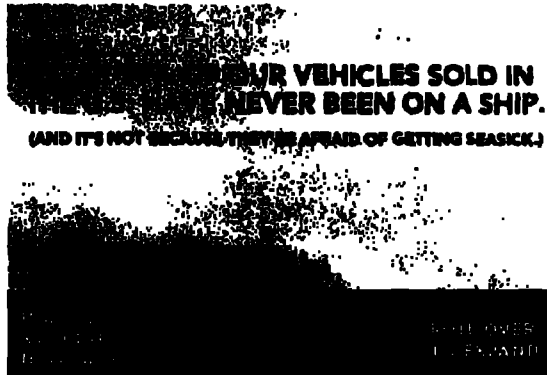
McKinney said Friday that the \$40,000 amount was determined under a contract, which established quarterly amounts that Racalto would be paid. She said she could not provide the date the contract was signed, and could not provide a copy of the agreement.

McKinney said Racalto's work on Massa's reelection campaign for 2010 began in mid-December 2008, a few weeks after he won election to Congress.

Four current and former campaign staffers told The Washington Post that they were surprised by the payment and that they were unaware Racalto was doing any substantial campaign work during that time.

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They requested anonymity because of the House ethics investigation of Massa and because they did not want to hurt their job prospects on Capitol Hill.

All the other staffers working on Massa's campaigns -- for 2006, 2008 and 2010 -- were paid in more regular installments, often monthly and sometimes quarterly. Campaign reports also show that they were reimbursed for travel, mileage and other campaign-related expenses.

The reports show that Racalto received no payments before March 4 and was not reimbursed for any campaign-related expenses.

Stanley Brand, a white-collar defense lawyer and former House general counsel, said that members of Congress have some discretion in how much they pay campaign workers, but that Federal Election Commission rules mandate that the time congressional staff members spend on campaign work be documented.

To create a wall between congressional and political work, aides are required to use non-government phones to make fundraising calls and to leave their congressional office buildings to engage in other related electioneering. Brand said the amount Racalto received after so many months may well be justified but could also raise eyebrows.

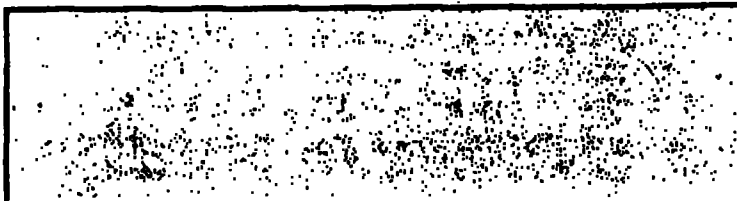
"He can assert that he deferred payment and it may be fine; still, the question here is about the amount," Brand said. "If it ever came to an enforcement action in front of the FEC, they would ask for some documentation of how much time he spent. I don't know that they're just going to take his word for it."

Numerous current and former staff members in Massa's Washington office questioned the amount of the payment. They said Racalto was busy as the chief of staff and often was away for medical treatment.

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The Washington Post

Massa alleges fraud in campaign payment, salary increase

By Carol D. Leonnig
Washington Post Staff Writer
Sunday, April 18, 2010; A04

Former congressman Eric Massa on Saturday denied authorizing a \$40,000 payment from his campaign account to a top aide, and he accused the aide of tricking campaign staff to get the money.

The New York Democrat also said that someone forged his signature on paperwork in recent months to increase the congressional salary of the aide, Chief of Staff Joe Racalto, from \$120,000 to \$160,000. Through his attorney, Massa said he would provide information "to the proper authorities."

Racalto called the accusations ridiculous and false and said he was entitled to the salary increase and the payment for campaign work, his attorney said Saturday.

Campaign finance records show the \$40,000 payment to Racalto was recorded on March 4, the day after Massa announced his resignation amid a sexual harassment scandal. At that time, Massa's reelection campaign was effectively over and Racalto -- because of his knowledge of complaints against Massa -- was considered a critical potential witness in the scandal.

Now, Massa and his onetime confidant are accusing each other of lying -- and worse. Racalto last week publicly accused Massa of sexually harassing him. Massa's most recent allegations are almost certain to trigger an investigation into possible violations of campaign finance laws.

Under federal law, a congressional staff member's payment for work on a campaign must come from campaign funds, not from the salary received for congressional work.

On Friday, Racalto told The Washington Post that he received the \$40,000 under a long-standing contract to do political work for Massa's 2010 reelection campaign. Racalto said he deferred being paid for 15 months to help the campaign keep its coffers full but then sought to collect when he learned of Massa's

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